Biotechnology Innovation Organization

**February 28, 2019**

**Senator Matthew Lesser, Chair**
**Representative Sean Scanlon, Chair**
**Insurance Committee**
**The Connecticut General Assembly**
**Legislative Office Building, Room 2800**
**Hartford, CT 06106**

**Re: Testimony in Opposition to House Bill 7174**
**Submitted By: The Biotechnology Innovation Organization (BIO), Washington, DC**

**Dear Chairmen Lesser and Scanlon, Ranking Members Kelly and Pavalock-D'Amato and Members of the Insurance Committee:**

Thank you for the opportunity to present testimony today in opposition to HB 7174, "An Act Concerning Prescription Drugs." My name is Angela Gochenaur, Eastern Director of State Government Affairs for the Biotechnology Innovation Organization.

The Biotechnology Innovation Organization (BIO) opposes HB 7174, as it seeks to criminalize intellectual property resolutions that occur on a nation-wide basis, in many cases wholly outside the State itself. While BIO and its members support efforts to curtail abusive industry practices that might inhibit or otherwise delay generic competition, these efforts must necessarily be undertaken on a national level to ensure consistent enforcement and prevent a chilling of otherwise legitimate and legal pro-competition resolutions.

To be sure, Connecticut has significant police powers to regulate commercial conduct within its borders. It does not, however, possess unbridled authority to criminalize conduct that occurs wholly outside of Connecticut or otherwise on a national level. Rather, we believe a better approach for the State would be to work with its elected federal officials on already introduced federal legislative options that would target the very abusive conduct envisioned in HB 7174. This would ensure both meaningful resolution to the problems outlined in HB 7174 and do so in a manner that avoids Constitutional questions that pervade a one-state alone approach.

Biopharmaceutical industry patent settlements are complicated. Both the Hatch-Waxman Act and the Biologics Price Competition Act envision the need for some patent litigation in these highly regulated markets. The processes in many cases result in competition coming to the market far earlier than many patent terms might otherwise allow - a result that is resoundingly positive for patients and the marketplace. Conversely, broadly targeting patent litigation without regard to the intricacies of this marketplace risks significant unintended consequences.

Further, patent settlements themselves have long been the subject of federal litigation and Federal Trade Commission scrutiny. For instance, the Supreme Court last addressed these settlements in its 2013 *Actavis* decision. The Court had been asked – but refused – to find such settlements "per se" illegal. Instead, the Supreme Court ruled that such settlements must be reviewed under a "rule of reason" analysis, which requires consideration of the facts specific to the business in which there is allegedly anticompetitive behavior. Questions

such as the size of any payment, the existence, scope and duration of a patent, the agreed-upon date of market entry, the market positions of the parties who are settling their litigation are all highly specific, and must be answered before deciding whether there is an unreasonable restraint on trade. In other words, there is no one-size-fits all approach to distinguish anticompetitive agreements from pro-competitive ones.

The difficulty in defining a bright line under *Actavis* underscores the need for a targeted federal solution to eliminate those abusive settlements while not damaging patent agreements that actually enhance competition. Efforts underway in the US Congress may well do just that.

We urge the State to abandon a flawed single-state effort in favor of helping to support a robust national solution that will end abusive conduct once and for all. Thank you for your time and attention to these important matters.

With sincerest regards,

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